

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

KYMM V. CHANDLER,

Petitioner, : Case No. 2:24-cv-3982

- vs -

Chief District Judge Sarah D. Morrison
Magistrate Judge Michael R. Merz

MATTHEW J. LUTZ,

Respondent.

**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS
AND STAYING PROCEEDINGS PENDING EXHAUSTION OF
STATE COURT REMEDIES**

This is a habeas corpus action brought *pro se* by Petitioner Kymm Chandler seeking relief from his¹ conviction in the Muskingum County Court of Common Pleas on charges of trafficking in cocaine, endangering children, and manufacturing drugs. The case was randomly assigned on filing to Chief District Judge Sarah D. Morrison and referred to the undersigned under Amended General Order 22-05.

Upon preliminary review under Rule 4 of the Rules Governing § 2254 Cases, the Magistrate Judge found that Petitioner had not yet been sentenced and recommended dismissal of the Petition without prejudice because Petitioner had not exhausted available state court remedies (Report, ECF No. 4). Petitioner has timely objected to the Report and now advised that he has

¹ The Court apologizes for use of the feminine pronoun in prior filings. The Magistrate Judge read “Kymm” as a previously unknown abbreviation of “Kimberly” which is ordinarily a woman’s name.

been sentenced and in fact has appealed to the Ohio Court of Appeals for the Fifth District (Response, ECF No. 5).

These are the circumstances contemplated by the Supreme Court when it recognized the authority of district courts to stay habeas proceeding pending exhaustion in *Rhines v. Weber*, 544 U.S. 269 (2005). Staying the habeas case allows the state courts an appropriate first pass at constitutional questions while sparing a petitioner the need to satisfy the second or successive bar enacted in 28 U.S.C. § 2244(b) when exhaustion is complete.

Accordingly, the Report and Recommendations is WITHDRAWN and these habeas corpus proceedings are STAYED pending the outcome of Petitioner's state court proceedings. The Clerk is directed to serve this Order and the Petition on the Attorney General of Ohio so that completion of state court proceedings can be monitored. However, the Attorney General is under no obligation to file a Return of Writ or the State Court Record pending further order of the Court.

October 8, 2024.

s/ *Michael R. Merz*
United States Magistrate Judge